Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 299 OF 2005

APPELLANT (IN JAIL) : SHAMBHU PANIKA, S/O SHRI DHARMA, AGED ABOUT 30 YEARS, RESIDENT OF VILLAGE-KAROUNTI, POLICE STATION JHILMILI, DISTRICT SURGUJA, (C.G.).

VERSUS

RESPONDENT : STATE OF CHHATTISGARH, THROUGH: THE POLICE STATION, JHILIMILI, DISTRICT SURGUJA.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

(37)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 299 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13-07-2006 Appellant Shambhu Panika by Shri A.K.Shukla, Advocate. State by Shri D. C. Pandey, Panel Lawyer. This appeal was finally heard today. Shri A.K.Shukla, learned counsel for the appellant at the very outset submitted that he would not assail the finding recorded by the IInd Additional Sessions Judge, Surajpur in Sessions Case No.417/2004 vide judgment dated 21-03-2005 that the appellant had assaulted Indramani with a wooden plank on the head as also on the right metacarpel bone due to which she had sustained simple injuries on the head and had sustained fracture of fifth right metacarpel bone. Learned counsel for the appellant submitted that he would assail the conviction of the appellant under Section-307 of IPC only on the ground that even on the basis of facts established by the prosecution, the offence did not travel beyond Section-352 of the IPC since there was no evidence to show that the injuries sustained by Indramani PW-6 were dangerous to life. It was also contended that considering the nature of injuries and the appellant being in jail since 23-07-2004, the sentence awarded to the appellant should be modified to sentence already undergone by him.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.299/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, Shri D.C.Pandey, learned Panel Lawyer appearing for the State fairly conceded while arguing that in view of the fact that Indramani had sustained a fracture in the fifth metacarpel bone besides simple injuries on the head, the offence committed by the appellant would not travel beyond Section-325 of IPC.

Having heard rival contentions, I have perused the record of Sessions Case No.417/2004. Although Indramani PW-6 was declared hostile by the prosecution yet her testimony clearly revealed that she had sustained injury due to an assault made by the appellant. Obviously, being the wife of the appellant, Indramani PW-6 had suppressed the genesis of the offence and did not depose the whole truth which was clearly borne out from the testimony of her father Kusau PW-4 who deposed that Indramani had visited her matrimonial home on the date of occurrence. The appellant had also visited Village-Bhaiyyathan and during a quarrel with his wife Indramani, the appellant assaulted her with a wooden plank on the head. Medical evidence of Dr. B.C.Paikra, PW-12 clearly establishes that Indramani had sustained as many as 4 injuries on her head and there was another injury with swelling and bruise size 2"x1/2" on the upper part of right hand

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.299/.. **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dr. M.K.Jain PW-2 who conducted the radiological examination did not find any grievous injury on the head of Indramani and only a fracture of fifth metacarpel bone of the right hand was found as per report Vide Ex.P-2. It is pertinent to note that Dr. B.C. Paikra PW-12 has in his testimony nowhere stated that the injuries sustained by Indramani on her head were dangerous to life or could have resulted in her death, if not treated immediately. The evidence led by the prosecution also establishes that the appellant had gone to Village-Bhaiyyathan to bring back his wife Indramani to her matrimonial house at Village-Karroti which fact was admitted by the appellant in his examination under Section-313 of Cr.P.C. Upon refusal by Indramani, a quarrel had ensued between the appellant and Indramani during which the appellant had inflicted injuries on Indramani with a wooden plank. Medical evidence led by the prosecution clearly shows that injury sustained by Indramani on her head were simple in nature and only a grievous injury i.e. fracture on fifth right metacarpel bone was sustained by her. F.I.R. Ex.P-15 also shows that she herself went to Police Station-Jhilmili, District-Sarguja to lodge the F.I.R.

In this view of the matter, there is nothing on record to indicate that the appellant had intended or attempted to cause

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 299/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the death of Indramani. Therefore, the offence committed by the appellant squarely falls under Section-325 of IPC for voluntarily causing grievous hurt to Indramani by a wooden plank. Conviction of the appellant under Section-307 of IPC, therefore, deserves to be set aside and altered to Section-325 of IPC.

The only question which now requires ~~for~~ consideration is the sentence to be awarded to the appellant. The testimony of Indramani PW-6 clearly shows that she did not want to depose against her husband. It also shows that she was residing at Village-Karroti, i.e. her matrimonial home on the date of her evidence. Shri A.K.Shukla, learned counsel for the appellant has also submitted that Indramani PW-6 was residing at her matrimonial home even after the occurrence. The appellant has already undergone incarceration from 23-07-2004 till date i.e. for a period of almost 2 years.

Considering the facts and circumstances of the case and the injuries sustained by Indramani, I am of the considered opinion that the interest of justice would be served if the appellant is sentenced to imprisonment already undergone by him and also to pay a fine of Rs.5,000/-.

(41)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A. No. 299/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

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	In the result, this appeal is partly allowed. Conviction of the appellant under Section-307 of IPC and the sentence awarded thereunder are set aside and instead the appellant is convicted under Section-325 of IPC and sentenced to imprisonment already undergone by him and to pay a fine of Rs.5,000/- in default of which the appellant would undergo simple imprisonment for a period of 6 months. Fine awarded by the learned trial Judge, if paid, shall be adjusted. Sd-/ Dilip Raosaheb Deshmukh Judge	